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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Administration of the) CC Docket No. 92-237
North American Numbering Plan)
Carrier Identification Codes (CICs))

REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), by its attorneys, respectfully submits these comments in response to the Commission's *Further Notice*¹ in the captioned proceeding regarding policies and rules for Carrier Identification Codes (CICs) in connection with implementation of four-digit CICs. MCI participated actively in formulation of the recommendations of the North American Numbering Council (NANC) on CICs, and fully supports the NANC's February 19, 1998 report to the Commission.²

INTRODUCTION AND SUMMARY

The *Further Notice* seeks comment on a variety of possible Commission rules for CIC assignment, usage and transfer. Most of these proposals arise from the Commission's past

¹ *Administration of the North American Numbering Plan, Carrier Identification Codes*, Further Notice of Proposed Rulemaking and Order, FCC 97-364, CC Docket No. 92-237 (rel. Oct. 9, 1997) ("Further Notice"). By Order released November 21, 1997, the Chief, Network Services Division extended the deadline for filing comments on the *Further Notice* until March 6, 1998. Order, DA 97-2439 (rel. Nov. 21, 1997). The extension was granted to "allow NANC to assemble a diverse group of industry representatives to consider the questions raised in the Order and work diligently to find common ground." Order ¶ 3. As is clear from the consensus NANC Report on CIC usage and assignment, *see* note 2, that objective has been achieved.

² *Report and Recommendations of the CIC Ad Hoc Working Group to the North American Numbering Council Regarding Use and Assignment of Carrier Identification Codes*, Feb. 18, 1998 ("NANC Report"). By letter dated February 19, 1998, the chairman of the NANC delivered this report to the Commission, stating that at its February 19 meeting the NANC had "unanimously adopted" the report and its recommendations. The *Further* (Footnote continued on next page)

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experience with three-digit CICs (e.g., “222”), which in recent years have been in chronically short supply, necessitating industry conservation measures and limits on CIC assignment to any one carrier or “entity.” With the impending expansion of CICs to four-digits, however -- and the resulting near-term availability of 10,000 CICs, a ten-fold increase over current CIC resources -- these strict limitations are no longer in the public interest. As the International Telecommunications Union found in ITU Recommendation E.190, “conservation unto itself is not a valid reason to deny applications for numbering resources.” See NANC Report ¶ 1. In the new environment of four-digit CICs, scarcity of these numbering resources is, for all practical purposes, a thing of the past, making policies and rules developed in an earlier era of shortage largely inappropriate for the burgeoning competitive telecommunications environment.

This change in CIC availability has crucial implications for the proposals on which the *Further Notice* seeks comment. Prudent management of finite telephone numbering resources, although very important, does not require extraordinary conservation measures *in the absence of a clear short-run threat of resource exhaust*. As the NANC reported to the Commission on this subject, “while there could be an increase in assignment of CICs when the transition [to four-digit CICs] ends due to pent up demand stemming from the preset conservation limits, *it is unlikely that there will be a significant shortage of CICs.*” NANC Report ¶ 25 (emphasis supplied). Thus, “the NANC recommends that the Commission adopt a more flexible and longer-term perspective on CIC conservation in a four-digit CIC environment.” *Id.* ¶ 30.

Notice requested NANC to present its recommendations on the Commission’s tentative conclusions and proposals. *Further Notice* ¶¶ 2, 63.

Among other things, this means that:

- The Commission should not impose a broader definition of “entity” for CIC assignment in order to artificially constrain availability of CICs to affiliated corporations. NANC Report ¶¶ 19-22; *Further Notice* ¶ 24.
- The Commission should not change the existing industry guidelines permitting merged companies to retain CICs obtained through merger or acquisition in light of the costs and burden of reconfiguring whole networks to consolidate CIC usage. NANC Report ¶¶ 27-29; *Further Notice* ¶ 36.
- The Commission should not impose conservation measures on four-digit CICs unless and until there is a recognized short-term risk of exhausting these 10,000 codes, which are conservatively estimated to have a useful life of more than 20 years. NANC Report ¶¶ 30-31, 34; *Further Notice* ¶¶ 39, 43.
- The Commission should not, except for basic requirements against “warehousing” of unactivated and unused CICs, codify the current industry guidelines, thus permitting use and assignment of CICs to remain flexible to adequately meet the needs of carriers and customers in the rapidly changing telecommunications marketplace. NANC Report ¶¶ 7-10, 35-37; *Further Notice* ¶¶ 10, 13, 46-51.

These consensus NANC recommendations, representing the views of all segments of the telecommunications industry (parties that are usually in significant disagreement over numbering policy issues), illustrate the Commission’s wisdom in establishing the NANC as an advisory body on telephone numbering. MCI is honored to have been part of the NANC process leading to these recommendations, and urges the Commission to adopt them in their entirety. The intent of the *Further Notice* is admirable, in that Commission intervention is frequently needed to ensure nondiscriminatory and rational use of numbering resources and to avoid premature depletion. However, this is not an instance where direct Commission involvement -- either on general CIC rules or day-to-day CIC assignment issues -- is warranted in light of the low risk of harm to communications providers, customers or the broader public interest. Unlike “800”

numbers, where the industry was unable to manage the resource to avoid competitive disparities in number assignment and premature exhaust, CICs are backed by a clear industry consensus for prudent, yet flexible, assignment, usage and transfer policies. Oversight by the NANC and the Commission remains available should this industry consensus fail or if the demand for CICs in the future in fact outstrips the availability of the resource.

In the comments that follow, MCI focuses on several issues that we believe are crucial in the Commission's consideration of CICs. This is not meant to suggest that MCI does not have an interest in other CIC-related issues, but rather that we believe the consensus NANC report is well-reasoned and documented, so that detailed discussion of each of the NANC's many recommendations is not necessary.

DISCUSSION

I. THE COMMISSION'S PROPOSALS TO EXPAND THE DEFINITION OF "ENTITY" AND TO CREATE A "COMPETITIVE-NECESSITY" EXEMPTION ARE AMBIGUOUS AND UNNECESSARY IN THE ERA OF FOUR-DIGIT CICs

The *Further Notice* proposes to eliminate the control element from the definition of "entity" in the *CIC Assignment Guidelines* on the ground that the "subjective nature of the concept [of] 'control' has made it sometimes difficult to administer CICs." *Further Notice* ¶ 24. In its place, the Commission tentatively concludes that an entity should be defined as entities that hold "any" direct or indirect ownership interest in another entity. The Commission also proposes an exception to the ownership test in situations where "denial of a separate CIC to a company could weaken competition," as in the case of a wireless subsidiary of an RBOC. *Id.* ¶ 30.

There are two concerns with this approach. First, the expansive definition of "entity" proposed by the Commission is a means of roping more affiliated companies under a common

“umbrella” for CIC assignment purposes, an objective that is insignificant in the relatively unconstrained four-digit CIC environment and that would unnecessarily restrict business organizational decisions. Second, the solution proposed by the *Further Notice* is worse than the problem itself. While there are difficulties determining corporate control in particular factual circumstances, the proposed replacement -- under which the Commission would need to decide how competitively “important” a CIC was to a specific telecommunications service provider -- carries even greater ambiguity.

The principal reason to define “entity” for CIC purposes is to monitor and control how many CICs can be assigned to companies that, although separate legally, are for practical purposes one “unit” and should be treated as such. In an era where there were not enough CIC codes to go around, this principle was very important, because it precluded the creation of “sham” corporate affiliates whose major purpose was to evade the assignment constraints. But that is plainly not the case once the transition to four-digit CICs is completed, because these 10,000 codes are far more than enough to meet current needs and will likely last for more than 20 years. NANC Report ¶ 34. Moreover, as detailed in Section II, changes in CIC network usage are complex and costly, making it very unlikely as a practical matter that carriers would take on the costs associated with CIC implementation merely to control additional codes that are used principally for network routing purposes. Consequently, there does not appear to be a public policy reason to expand the definition of “entity” by allowing “any” economic interest (even routine, investment-only interests) to qualify for corporate affiliation.

This does not mean that the industry (or the Commission) should necessarily retain the relatively vague concept of corporate “control” as the linchpin of affiliation for CIC assignment

purposes. As the NANC discussed, the Commission can remove the subjectivity inherent in the corporate control test by substituting a strictly quantitative (50% or greater ownership interest) standard for “entity.” NANC Report ¶ 21. This alternative approach has the added advantage of avoiding the need for creation of numerous and/or ambiguous exceptions to the “any interest” test.

Indeed, the *Further Notice* recognizes that an expansive definition of entity may be unworkably broad, and therefore proposes that the Commission create exceptions to that test where competitive necessity dictates. *Further Notice* ¶ 30. Yet in today’s rapidly changing and complex telecommunications marketplace, it is not appropriate for the Commission to try to determine which numbering resources are most “important” to certain carriers or which carriers are more competitively in “need” of additional CICs. Even if there were neutral principles on which to make such determinations, they would could well involve the Commission in conflicting, contentious and competitively intrusive proceedings. The far better approach, as outlined by the NANC, is to administer CICs under a fixed, quantitative test for “entity” that is not subject to manipulation and does not require the Commission to become an arbiter either of corporate affiliation or competitive necessity.

II. CONSISTENT WITH THE NANC RECOMMENDATIONS, CICs OBTAINED THROUGH MERGER AND ACQUISITION SHOULD NOT COUNT TOWARD A CARRIER’S CIC ASSIGNMENT ALLOCATION

Paragraphs 36 through 38 of the *Further Notice* address the treatment of CICs obtained through merger and acquisition. The Commission proposes that the current distinction between directly assigned CICs and codes obtained by “other” means (i.e., merger and acquisition) be eliminated, *id.* ¶ 36, and that the *CIC Assignment Guidelines* be amended (as promulgated by the

Commission) to disallow CIC transfers unless the “combined” CIC count is within the entity’s permissible CIC allocation. *Id.* ¶ 38.

As with the *Further Notice*’s treatment of corporate affiliation, these proposals are apparently driven by a Commission concern that CICs will remain in short supply, and that regulatory intervention continues to be necessary to allocate scarcity and preserve competitive parity. But CICs today are not a matter of competitive rivalry, as the industry has developed a workable and fair means of distributing three-digit CICs, even though there are not enough for all carriers to have as many as they could use for efficient provision of telecommunications services. Moreover, once the transition to four-digit CICs is finished, there is no longer a substantial “scarcity” rationale for detailed regulatory rules -- and in particular little cause for the Commission to reverse balanced industry guidelines that have been fairly negotiated by representatives of all industry segments, including the competitive firms the *Further Notice* seems to want to protect.³

MCI strongly supports the NANC recommendation that the Commission not alter the current *CIC Assignment Guidelines* permitting CICs to be transferred in connection with mergers and acquisitions without regard to conservation limitations. NANC Report ¶¶ 27-28. *Mergers and acquisitions in the telecommunications industry are not structured in order to “buy” CICs.* Furthermore, mergers and acquisitions are occurring at an increasing pace in all segments of the industry (LECs, IXC, etc.), meaning that the current industry guidelines do not provide a

³ The *Further Notice* states only that the proposal “is prudent and reasonable in light of the increased demand for CICs and their importance to meeting the pro-competitive objectives of the 1996 Act.” *Further Notice* ¶ 36.

competitive “advantage” to any industry participants.⁴ Most importantly, however, CICs are used by carriers to provide special, differentiated and efficient telecommunications services to their customers. Because they have virtually no value aside from actual use in telecommunications networks, there is little incentive for any carrier to request a CIC assignment unless they will actually use it, and hence no serious reason for concern that mergers may be a means of competitive “gamesmanship” with regard to CICs.

Actual use of CICs in today’s telecommunications networks is also complex, involving thousands of switches and millions of access trunk groups. “Consolidation” of CICs by companies that become acquired, or that have grown through acquisition, is an extremely costly, difficult, burdensome and time-consuming endeavor. The *CIC Assignment Guidelines* reflect this real-world reality by exempting CICs acquired by means “other” than direct assignment from the conservation limits. Thus, if a firm acquires another carrier, the acquired company’s CICs can continue to remain in service, with the acquiring company limited by the number of its “own” CICs that have been assigned. Any other approach would wreak havoc with the industry and impose massive network reconfiguration costs -- which must ultimately be paid by consumers.

⁴ GTE and BellSouth added “minority opinions” to the NANC Report suggesting that an overall limit on total CICs (both merger and non-merger), such as the 50 CIC limit proposed by GTE, would be appropriate. NANC Report, App. B. This was the only issue on which there were any dissenting opinions to the NANC Report. Yet what these minority opinions do not give enough weight to is the rapidly changing nature of mergers and acquisitions in the industry, in which large-scale transactions are becoming increasingly common place, from SBC/Pacific Telesis and SBC/SNET to MCI/WorldCom and others. Any *a priori* limit on the number of CICs that can be obtained through merger or acquisition would therefore run the risk -- which all segments of the industry should concur is undesirable -- that transactions would be driven by artificial constraints on access to essential numbering resources, rather than their economic merits.

III. EXTRAORDINARY CONSERVATION MEASURES SHOULD NOT BE NEEDED FOR FOUR-DIGIT CICs FOR MANY YEARS DUE TO THE FAR LONGER LIFESPAN ANTICIPATED FOR THESE ENLARGED NUMBERING RESOURCES

The *Further Notice* tentatively concludes that a conservation plan is necessary when four-digit CICs outside the 5XXX and 6XXX pools become available, and seeks comment on whether “when a predetermined percentage of all four-digit Feature Group D CICs have been assigned, we should institute a conservation plan that would automatically be triggered.” *Further Notice* ¶¶ 35, 39. MCI concurs with the NANC’s recommendations that the Commission “adopt a more flexible and longer-term perspective” on CIC conservation in the new environment of four-digit CICs. NANC Report ¶ 30. The NANC’s cautionary proposal to continue the six-CIC limitation for an initial six-month “evaluation” period, *id.* ¶¶ 2-3, 24-25, represents a superior way of ensuring that there is no unanticipated shortage of the newly enlarged CIC resource.

There is an important difference between the approaches of the NANC Report and the *Further Notice* to whether Commission-imposed CIC conservation measures remain needed. The *Further Notice* proceeds on the assumption that, because CICs are in demand, “conservation” measures must be implemented, by regulatory rule, in order to extend the life of the resource as long as possible. Indeed, the *Further Notice* expressly draws parallels between “800” toll-free numbers and CICs in proposing “automatic” conservation measures and delegation of additional conservation authority to the Commission’s Common Carrier Bureau. *Further Notice* ¶ 39. But toll-free numbers are commercial commodities, while CICs are not. There is no close analogy between toll-free numbers and CICs because the former are provided as a service to end users, are highly commercially valuable, and are faced with geometrically

increasing demand that has rapidly and unexpectedly outstripped supply. In contrast, CICs are a relatively stable resource and are typically of little or no independent commercial value to telecommunications carriers beyond their actual network functionality as a means of providing services. Thus, as the NANC Report stated, the “prudent use” of CICs is “inherent in the provision of telecommunications services.” NANC Report ¶ 6.

Commission action on numbering issues is important in avoiding premature exhaust and in resolving competitive disputes among differing industry segments, for instance in connection with NPA relief plans, number portability and, as is clear from history, toll-free number administration. And it is true that the industry has not consistently managed numbering resource administration in the most efficient and fair manner, necessitating Commission intervention because industry factions could not reach agreement on a common solution to numbering problems. That is simply not the case for CICs, however. In this area, NANC oversight and leadership has produced a remarkable degree of almost complete industry consensus, and there is plainly no imminent shortage or scarcity of CICs. MCI believes that, in these circumstances, the Commission should defer to the NANC’s expert judgment and save its limited resources for the more pressing numbering policy issues that are already pending before the Commission and that are likely to arise down the road.

CONCLUSION

The Commission should adopt the NANC recommendations and, except for the requirements that CICs actually be activated and used, should not promulgate any regulations on CIC assignment, usage or transfer. The present conservation limit of two CICs per entity should

be lifted when the four-digit CICs are implemented, and extraordinary conservation measures should not be imposed on four-digit CICs unless and until there is a recognized short-term risk of exhausting these numbering resources.

Respectfully submitted,

By: 

Glenn B. Manishin
Blumenfeld & Cohen - Technology Law Group
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
202.955.6300
202.955.6460 fax

Donna M. Roberts, Senior Counsel
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
202.887.2017
202.887.3175 fax

Counsel for MCI Telecommunications Corp.

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CERTIFICATE OF SERVICE

I, Amy Wallace, hereby certify that the foregoing document was served this 6th day of

March, 1998, by hand, on the following:


Office of the Secretary (11 copies)
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Geraldine Matise, Esq.
Chief, Network Services Division
Common Carrier Bureau
Federal Communications Commission
2000 M Street, N.W., Room 235
Washington, D.C. 20554

Marian Gordon, Esq.
Network Services Division
Common Carrier Bureau
Federal Communications Commission
2000 M Street, N.W., Room 235
Washington, D.C. 20554

Carmell Weathers
Common Carrier Bureau
Federal Communications Commission
2000 M Street, N.W., Room 221
Washington, D.C. 20554

International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, D.C. 20036



Amy Wallace